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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

70-198

October Term, 1970

No. ~~1740~~

In the Matter
of
The Settlement of the Final Account of Proceedings of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee under an Indenture of Trust dated December 19, 1935 made by Margaret Maher Acheson for the benefit of Edward Goodrich Acheson, III.

LAURA ACHESON DOWELL, EDWARD GOODRICH ACHESON, IV, MARGARET ACHESON KENNEDY, THOMAS R. ACHESON and JOHN W. ACHESON,

Petitioners,

v.

HELEN F. ACHESON, STEPHEN A. HELMAN, as Guardian *ad Litem* of LINDA BELLE ACHESON, BANK OF AMERICA NATIONAL TRUST & SAVINGS ASSOCIATION, as Executor of the Last Will and Testament of Edward Goodrich Acheson, III, Deceased, and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Trustee under an Indenture of Trust dated December 19, 1935 made by Margaret Maher Acheson for the benefit of Edward Goodrich Acheson, III,

Respondents.

PETITIONERS' REPLY BRIEF

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Morgan Guaranty Trust Company of New York, trustee under the 1935 New York indenture, has filed with this court its "Statement in Support of Petition for a Writ of Certiorari to the Court of Appeals of New York." The Statement states that Morgan Guaranty joins petitioners in requesting a writ of certiorari because this case involves "substantial and fundamental questions of trust law and

the jurisdiction of the courts of the States of New York and California with respect thereto."

In view of this Statement of the New York trustee, the opposition briefs of the other respondents call for only brief comment.

Apparently the guardian ad litem has been under the misapprehension that the petitioners were permitted to file their proposed pleading in the California heirship proceeding (the "Statement Setting Forth Interests in Estate" printed at A5-A8 of the guardian ad litem's brief). This is not true. Section 473 of the California Code of Civil Procedure requires a proposed pleading to accompany the motion under Section 473, but the motion was denied and the California court denied the petitioners leave to file any pleading. The California court accordingly declined to consider the merits of the petitioners' substantive position (Decision and Order of the California Superior Court, printed at A-49-A51 of the petition for certiorari).

The cases cited at page 5 of the guardian ad litem's brief, *York v. Texas,* 137 U. S. 15 (1890), and *Kauffman v. Wooters,* 138 U. S. 285 (1891), holding that a state may constitutionally by statute deny the right to make a special appearance, are the very obverse of what the majority opinion below has decided here. None of the cases cited by the guardian ad litem or in the majority opinion hold that by making a procedural motion whose purpose is to obtain a hearing and determination on the merits, the moving party thereby loses all right to a hearing on the merits in that or any other court. As the California Court of Appeals said in *Batte v. Bandy,* 165 Cal. App. 2d 527, 539, 332 P. 2d 439, 446-7 (2nd Dist., 1958):

> "This is not a case where Cole is seeking to quash service and to avoid the jurisdiction of the trial court; but rather a case where it is seeking permission to appear and answer on the merits and asking that the void entry of default and the void default judgment be vacated for such purpose. Under such circumstances, it would be absurd to hold that Cole's motion to vacate the default amounted in substance to a consent that the default judgment could be entered against it."

The brief of the respondent Bank of America is devoted chiefly to the proposition that the facts of this case are so "special and unique" that the case has limited precedential value and should not be reviewed. This argument is fully answered by the dissenting opinion of Judge Breitel (A26 of the Petition for Certiorari), who points out that "the facts of every case are 'special and unique' but the rules they imply are insuppressible in this as in every other case." We think it fair to add that the decision below, departing as it does from the jurisdictional and constitutional principles established in *Hanson v. Denckla*, 357 U. S. 235 (1958), has already attracted the interest and concern of a substantial segment of the trust bar.

Neither of the opposition briefs attempts to deny or can obscure the fact that the petitioners' interests in the New York trust were cut off without a hearing on the merits in any court. The California court expressly refused to consider the merits, while the Supreme Court of New York found the petitioners' position meritorious (A36) but held that their rights had been lost by the proceedings in California. To accord full faith and credit to the California decree under such circumstances is to deprive the petitioners of their property without due process of law. That

is the issue which this case brings squarely before this court.

Respectfully submitted,

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